
(2014) 08 BOM CK 0157
In the Bombay High Court
Case No : Criminal Appeal No. 673 of 2012

Ranjana Bhagwan Gotarne

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Evidence Act, 1872 — Section 106, 161
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 08 BOM CK 0157

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Shivraj R. Patil, Advocate for the Appellant; V.R. Bhonsale, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The appellant, original accused, has preferred this appeal against the judgment and order dated 20th February 2012 passed by the learned Extra Joint Ad hoc Additional Sessions Judge, Thane in Sessions Case No. 36 of 2007. By the said judgment and order, the learned Additional Sessions Judge convicted the appellant for the offence under Sections 302 of IPC, and for the said offence sentenced her to suffer R.I. for life and to pay fine of Rs. 10,000/-, in default of payment of fine S.I. for one year.

2. The prosecution case briefly stated, is as under:

(i) Deceased Sunita was the daughter of PW-7 Lata and PW-1 Dattu. Sunita was about three years old at the time of incident. Bhagwan was the elder brother of Dattu. The appellant is the wife of Bhagwan. The appellant and Bhagwan had two children. Dattu was residing in Varsale Navpada along with his wife, children and his parents. The house of the appellant was situated near the house of victim-girl. The son of the appellant was looked after by PW-1 Dattu and his family. The son of the appellant died due to malnutrition. On account of this, the appellant was blaming Dattu and his family and the appellant had a grudge against them.

Few days prior to the incident, there was rab in the land of father of Dattu i.e. father-in-law of the appellant. Rab means land is burnt prior to sowing. There was some fire in the rab and Rushi, the son of the appellant, who was playing there received injuries on his legs. On account of this, the appellant abused her father-in-law and mother-in-law. She was saying that they have not taken care of her children. The appellant told them that within short time they will see the result.

(ii) The incident took place on 11.6.2006. At that time Dattu had gone to Kevnideve which is about 50 kms from Varsale Navpada. His wife PW-7 Lata had gone to Bazar at 7.30 a.m. At that time Sunita was in the house. Lata returned back from Bazar at 11 a.m. She found Sunita was not in the house, hence, she started searching for Sunita. She told the villagers that Sunita was missing. All persons started searching for Sunita. They found dead body of Sunita in the cowdung pit near the school. There was injury on the left side of neck of Sunita. They saw trail of blood-stains from the house of the appellant till the cowdung pit. Blood-stains were seen in the house of the appellant. FIR came to be lodged against the appellant. Thereafter investigation commenced. The dead body of Sunita was sent for postmortem. During the postmortem, it was found that there was a cut throat injury on the neck of Sunita with sharp and hard object. The size of the injury is 20 cm x 7 cm x bone deep. The cause of death was due to shock and hemorrhage due to injury to great vessels in the left side of neck, nerves and injury to the spinal cord. During the course of investigation, statements of various witnesses came to be recorded including PW-5 Vaishali and PW-6 Kusum which revealed that they had seen the appellant taking the victim girl to the house of the appellant. During investigation, a sickle came to be recovered at the instance of the appellant which is the weapon used in the offence. After completion of investigation, chargesheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant u/s 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned Advocate for the appellant and learned APP for the respondent-State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the appellant assaulted Sunita with a sickle and caused her death.

5. There is no eye-witness in the present case and the case is based entirely on the circumstantial evidence. The circumstances against the appellant are-(1) last seen, (2) motive, (3) recovery of sickle at the instance of the appellant, (4) blood-stains were found in the house of the appellant on the day of incident, and

(5) there was trail of blood-stains from the house of the appellant to the cowdung pit where the dead body of Sunita was found.

6. PW-5 Vaishali and PW-6 Kusum are the witnesses on the aspect of last seen. PW-5 Vaishali has stated that she knew the appellant. She has stated that at about 10 a.m. Sunita was playing in front of her house. At that time the appellant came there and took Sunita with her by holding her hand. Sunita's mother had gone to the bazar. She came back at about 11 a.m. Sunita could not be found hence they started to search for Sunita. She then saw the dead body of Sunita lying in the cowdung pit near the house of the appellant. Sunita was killed and thrown at that place. There was an injury on the left side of neck of Sunita. Thereafter she also saw blood-stains in the house of the appellant.

7. PW-6 Kusum is the next witness on the aspect of last seen. Kusum has stated that when the incident took place she was at her house. Sunita was playing in the courtyard. At about 10 a.m. to 11 a.m. the appellant came and took Sunita with her. Thereafter the body of Sunita was found in the cowdung pit. Sunita had sustained injury on the left side of her neck.

8. Mr. Patil, the learned Advocate for the appellant has submitted that the evidence of these two witnesses i.e. PW-5 Vaishali and PW-6 Kusum, cannot be believed because Vaishali has stated that Sunita was playing in front of her house at about 10 a.m. and thereafter the appellant took Sunita away with her, whereas PW-6 Kusum has stated that Sunita was playing in the courtyard and the appellant took Sunita away with her. He pointed out that Vaishali has stated in the cross-examination that there are 30 to 40 houses between her husband's house and her father's house. Vaishali is the sister of Dattu and when the incident took place she was at her husband's house. He pointed out that Kusum has stated that Sunita was playing in the courtyard when Kusum was at her house. Mr. Patil submitted that both these witnesses are stating about two different places, hence, their evidence cannot be relied upon.

9. We see no inconsistency in the evidence of both these witnesses because it has not come on record that the house of Vaishali and Kusum were situated far away from each other. No doubt it has come on record that there are 30 to 40 houses between the matrimonial house of Vaishali and her father's house. However, it is nobody's case that the victim girl was playing outside the house of father of Vaishali. We have seen the map Exhibit 18 and we find that the houses are situated in such a way that they are visible to each other, so that whatever is happening in front of one house the same is visible from the other houses. Looking to the evidence of PW-5 Vaishali and PW-6 Kusum, we do not find any such discrepancy therein so as to raise any doubt about their evidence. Thus, the evidence of these two witnesses proves the circumstance that the deceased was last seen in the company of the appellant.

10. The evidence of PW-5 Vaishali and PW-6 Kusum clearly establishes that the deceased was last seen in the company of the appellant. In this view of the

matter Section 106 of the Evidence Act would come into play. The evidence on record shows that the appellant took the deceased away with her. In such case, the appellant has to explain how the deceased sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principles which underlies Section 106 of the Evidence Act can be applied in cases of last seen. In the case of State of Rajasthan Vs. Kashi Ram, the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

11. The next circumstance is motive. PW-1 Dattu who is father of the deceased girl has stated that he was residing at Varsale Navpada along with his wife, children and his parents. Deceased Sunita was his daughter who was three years old at the time of incident. Bhagwan is the elder brother of Dattu and the appellant was the wife of Bhagwan. The appellant and Bhagwan were residing near the house of Dattu. Dattu has stated that the appellant and Bhagwan had one son who was being looked after by Dattu and his family. He died due to malnutrition. On account of this, the appellant was blaming all of them. The appellant had a grudge against the inmates of Dattu's house on account of this. Thereafter, Rushi the second son of the appellant sustained burn injuries while he was playing near the rab in the land of Dattu's father. Rab means land is burnt prior to sowing. There was some fire in the rab and the legs of Rushi who was playing there sustained burn injuries. Due to this, the appellant abused the parents of Dattu. She was saying that why they were not taking care of her son. She was very angry. The appellant told Dattu and his parents that within short time they will see the result. The incident occurred few days thereafter. This shows the motive for the appellant to commit the crime. She was angry on account of the fact that Dattu and his parents did not take care of her two sons due to which one died and another sustained burn injuries.

12. The motive is also brought on record through the evidence of PW-5 Vaishali. Vaishali has stated that leg of Rushi, the son of the appellant, got burned in the rab. The appellant was telling the complainant and his wife i.e. the parents of Dattu that they dislike her son Rushi. The appellant abused the complainant and his wife i.e. parents of Dattu. It is pertinent to note that Dattu along with his wife

and children were residing jointly with his parents and the appellant felt that all of them were not taking care of her children.

13. PW-7 Lata who is the mother of deceased Sunita has also stated that Rushi had sustained burn injuries due to rab. On the day Rushi sustained burn injuries, the appellant threatened them that if her son is not cured, they will see the result in sometime. Thus, the evidence of these three witnesses i.e. PW-1 Dattu, PW-5 Vaishali and PW-7 Lata shows that the appellant was annoyed with the family of Dattu as the appellant felt that they were not taking care of her children. It is pertinent to note that the appellant is the wife of Bhagwan who is the brother of Dattu and Dattu was residing along with his parents whereas Bhagwan and the appellant were residing separately near the house of Dattu. The appellant felt that her father-in-law and mother-in-law were only taking care of children of Dattu and not her children.

14. The next circumstance against the appellant is that, sickle was recovered at her instance. This is weapon of offence. Panch witness PW-10 Tarak has stated that the appellant in his presence had stated that she was ready and willing to produce the weapon. The police recorded her memorandum statement which is at Exhibit 30. Tarak has stated that thereafter the appellant led the police and panchas to her house. She took one ladder and then removed one sickle from the loft in her house. The said sickle came to be seized. The panchanama is at Exhibit 31. The sickle is muddemal Article No. 10. The sickle was sent to the CA. CA report at Exhibit 41 shows that the sickle was stained with human blood. In this connection, we may usefully refer to the decision of the Supreme Court in the case Gura Singh Vs. The State of Rajasthan, wherein it has been observed as under :

" In view of the authoritative pronouncement of this Court in State of Rajasthan Vs. Teja Ram and Others, we do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the "origin of the blood, the trial Court could not have convicted the accused. The Serologist & Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant."

It is pertinent to note that the appellant has not furnished any explanation for the presence of human blood stains on the sickle recovered at her instance.

15. It is the prosecution case that the appellant assaulted Sunita on the neck with sickle and caused her death. This is corroborated by the medical evidence. PW-11 Dr. Gosavi conducted the postmortem on the dead body of Sunita. On external examination he found the following injuries:

1] cut throat injury of neck with sharp and hard object extending from midline of neck anterior from left side upto and below right mastoid bone. Size was 20 x 7 cm x bone deep.

2] fracture cervical spine

3] fracture left hyoid bone cornue

4] cut injuries to left side great vessels and all the nerves.

5] fracture cervical spinal cord

6] fracture left great cornue hyoid bone.

On internal examination Dr. Gosavi noticed large vessels-torn/cut left external and internal carotids in neck. Spinal cord was open since there was injury to the spinal cord. After through dissection of neck posteriorly, fracture of cervical vertebra C3, C4 seen. Torn spinal cord at the level of C3, C4. According to Dr. Gosavi all injuries were ante mortem. In the opinion of Dr. Gosavi cause of death was shock and hemorrhage due to injury to great vessels in the left side of neck, nerves and injury to the spinal cord and these injuries could be caused by sickle M.O. No. 10. Thus, the medical evidence fully corroborates the prosecution case.

16. The next circumstance against the appellant is that drops of blood were found in the house of the appellant. PW-1 Dattu has stated about this fact. Dattu has stated that when he went to the house of the appellant, he saw drops of blood in the house of the appellant. PW-5 Vaishali has also stated that when she went to the house of the appellant she saw blood in the house of the appellant. PW-7 Lata has also stated that there were blood-stains in the house of the appellant. It is pertinent to note that the appellant has not given any explanation about the finding of blood stains in her house.

17. Next circumstance against the appellant is that, there was trail of blood leading from the house of the appellant to the cowdung pit where the dead body of Sunita was found. PW-7 Lata has stated that she found the dead body of her daughter near the cowdung pit near the school. She saw that her daughter had sustained injury to the left side of her neck. She saw that there were blood stains from the house of the appellant till the cowdung pit. PW-8 Ghatal has also stated that he saw blood stains from the house of the appellant till the cowdung pit. There were also blood stains on the wall of the house of the appellant. As far as PW-8 Ghatal is concerned, Mr. Patil submitted that his evidence cannot be relied upon because his statement was recorded five days after the incident. In support of his contention, he has placed reliance on the decision of this Court in the case of Bhagwan Babu Ghotkar & Ors. Vs. State of Maharashtra reported in 2001 ALL MR (Cri) 1569. Mr. Patil submitted that the evidence of the witness was not relied upon in the said case because his statement was recorded belatedly. We have carefully perused the said decision. We find that the evidence of the said witness was not relied upon because in the cross examination it was elicited that the statement u/s 161 was recorded 11 days after the incident and till then he had

not disclosed about the incident to anyone. In the present case, there is no cross-examination about whether Ghatal had disclosed about the incident to anyone. There is no such evidence on record in the present case as was there in the case of Bhagwan Ghotkar. Hence in such case this decision would not be applicable to the facts of the present case. Even assuming that the evidence of PW-8 Ghatal is excluded from consideration, we have the evidence of PW-7 Lata which clearly shows that trail of blood was seen from the house of the appellant till cowdung pit. This witness has not been shaken in the cross-examination. Thus the prosecution has clearly brought on record that the trail of blood was seen from the house of the appellant to the cowdung pit where the dead body was found.

18. Learned Advocate for the appellant submitted that it is the prosecution case that the appellant carried the body of deceased girl from her house to cowdung pit. He submitted that this was done in broad daylight sometime around 11.30 a.m. or 12 noon. He submitted that in such case some witness would have definitely seen the appellant carrying the dead body of girl from her house to the cowdung pit. He submitted that however the prosecution has not examined a single eye-witness who has seen the appellant carrying the body of the girl from her house to cowdung pit. It has come on record through the evidence of PW-7 Lata that the cowdung pit was hardly about 15 to 20 ft. away from the house of Lata and the evidence of PW-1 Dattu shows that the appellant was residing near his house. This shows that the cowdung pit was very close to the house of the appellant. Between the cowdung pit and the house of the appellant there is a compound of a school. The gate of the compound of the school is situated very close to the house of the appellant. According to map Exhibit 18, the appellant had crossed the compound and put the body in the cowdung pit. It has come on record through the evidence of PW-7 Lata that the day of the incident was Sunday hence it is not expected that there would be anyone in the school. The school is situated in a remote area in Navpada, Taluka Wada. Thus, in such case looking to the short distance which had to be travelled and the fact that it was Sunday, it was not possible that anyone would have witnessed the appellant carrying the dead body of Sunita from her house to the cowdung pit.

19. Lastly, Mr. Patil, the learned Advocate for the appellant submitted that the case is entirely based on circumstantial evidence. He has placed reliance on the judgment of the Supreme Court in the case of Hanumant Vs. The State of Madhya Pradesh, wherein in relation to cases based on circumstantial evidence the Supreme Court in para-10 has observed as under:

"In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in Reg. V. Hodge (1838) 2 Lewin 227) where he said:

"The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more

likely was it, considering such matters, to overreach and misled, itself to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should not be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused".

20. On carefully going through the evidence in the present case, we find that the circumstances stated above in para 5 have been fully proved by the prosecution against the appellant. We find that the circumstances established by the prosecution are consistent only with the hypothesis of the guilt of the appellant. The circumstances are of a conclusive nature and tendency and they show that none else but the appellant committed the crime. We find that the circumstances form a chain of evidence which is inconsistent with the innocence of the appellant and totally consistent with the guilt of the appellant. Looking to the evidence on record, we are of the opinion that the prosecution has proved its case against the appellant. Thus, we find no merit in the appeal. Appeal is dismissed.